IN THE HIGH COURT OF BOMBAY AT GOA
****

WRIT PETITION NO. 218 OF 2003

Mr. Antonio Salvador
Custodio de Brito,
r/o H. No.1120, Mazalwada,
Anjuna, Bardez, Goa. ... Petitioner

Versus

Orgasmic Natural Foods
Pvt. Ltd., represented by
its Director, Mr. Harry
Heinrich Rymer, r/o Bera-mer,
Villa No.5, Baga Rd., Calangute,
Bardez, Goa. ... Respondent.

Shri S. G. Bhobe, advocate for the petitioner.

Shri F. N. Tavora, advocate for the respondent.

CORAM : F. I. REBELLO, J.

DATE OF RESERVING THE JUDGMENT : 6th June, 2003.

DATE OF PRONOUNCING THE JUDGMENT : 12th June, 2003.

JUDGMENT

Rule. Respondent waives service. Heard forthwith.

2. The petitioner herein by the present petition impugns the orders of the trial Court dated 8th May, 2001, whereby the application for temporary injunction preferred by the respondent herein was allowed. An appeal was preferred against the said Order being Misc. Civil Appeal No.77/2001. That was dismissed by the Order of the Appellate Court dated 15th April, 2003. It is these Orders which are the subject matter of the present challenge.

3. Considering S.115 of the Civil Procedure Code, as now amended and as interpreted by this Court, no revision would be maintainable to challenge the Order passed in appeal. The petitioner however, has invoked the extra-ordinary jurisdiction, to contend that the order suffers from error apparent on the face of the record and in these circumstances this Court ought to interfere with the Order. It is contended that the Courts below have relied upon the lease deed which was not registered and, consequently, relying on a document which was inadmissible in evidence even at the interlocutory stage, discloses an error law apparent on the fact of the record. It is also contended that both the Courts below did not address themselves to the factum of possession and/or the documents in support, if any, and in these circumstances also, the Orders suffer from error apparent on the face of the record and are liable to be interfered with.

On the other hand, on behalf of the respondent, it is contended that the findings are findings of fact and the Orders do not suffer from any error of law apparent on the face of the record and in that view of the matter no interference is called for and consequently, the petition ought to be rejected.

4. A perusal of the order of the trial Court would show that the trial Court fixed points for

determination, amongst which point no.2 was the issue of possession of the suit premises. The learned trial Court relied on the lease deed and further the address of the respondent as shown in the lease deed. A receipt produced was not relied upon, on the ground that it is signed by one Robert Peter Morgan, who is the person who had given the power of attorney in favour of the respondent herein. The contention of the respondent that the lease had never been acted upon is disbelieved and it is on this basis that the learned trial Court proceeded to hold that the respondent was in possession.

The learned Appellate Court in paragraph 7 has proceeded on the footing that the genuineness of the lease deed has not been challenged by any party. The learned counsel for the petitioner has drawn my attention to the fact that the ground of inadmissibility of the lease deed has been taken and apart from that it had been taken in the written submissions filed. It is further contended that if the document is inadmissible, it could not have been relied upon and apart from that, the judgment does not show any other consideration of material for arriving at the conclusion that the respondent was in possession.

5. In the normal course, considering the amendment to Section 115 of the C.P.C., this Court ought not to interfere with the impugned Order. However, what is

material to note is that lease deed, reserving rent for ten years had to be registered. If it is not registered, the document was inadmissible,except for collateral purposes. The lease deed admittedly was not registered. Both the Courts below have not considered this aspect and accordingly, the order suffers from an error apparent on the face of the record. Secondly, merely because a document shows the registered address of the company by itself would not be a ground to arrive at a conclusion that it was the respondent who was in possession. Both the courts below had to address themselves to the material on record in the form of rent receipts and other documents, if filed, to find out as to who was in possession. Both the Courts below have not addressed themselves to this issue and on this count also the order suffers from an error apparent on the face of the record.

6. In the light of that, the following Order;-

The impugned Orders dated 8th March, 2001 and 15th April, 2003 are quashed and set aside. The matter is remanded to the Civil Judge, Senior Division, Mapusa to dispose of the application for temporary injunction, after hearing both the sides on or before 15th July, 2003. Parties to appear before the learned Civil Judge, Senior Division, Mapusa, on 23rd June, 2003 at 10.30 a.m. for further directions.

Rule accordingly. There shall be no order as to costs.

F. I. REBELLO, J.

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